



Federal Communications Commission
Washington, D.C. 20554

March 17, 2005

Mr. Quentin L. Breen
Managing Principal
Westel, L.P.
36941 S. Chiloquin
Chiloquin, Oregon 97624

DA 05-677

Re: Request for Waiver of Section 24.203 of the
Commission's Rules and Extension of Five-
Year Construction Requirement
Call Sign WPOJ830

Dear Mr. Breen:

This letter denies Westel, L.P.'s (Westel) request for an extension of time to meet the five-year construction requirement for Personal Communications Services (PCS) license, call sign WPOJ830, in the Kahului-Wailuku-Lahaina, Hawaii license area (BTA222C).¹ For the reasons stated below, we also deny Westel's request for waiver of Section 24.203 of the Commission's rules, which details the construction requirements for PCS licenses.² Accordingly, pursuant to Section 1.946(c) of the Commission's rules,³ the license for WPOJ830 terminated automatically on June 30, 2004.

The Commission granted PCS station WPOJ830 on June 30, 1999. The five-year construction deadline for this license was June 30, 2004. In the Waiver Request, Westel states that it "has planned to construct compliant facilities," but that construction has been affected by temporary health problems of Westel's managing principal.⁴ Westel states that subsequent to the recovery of its managing principal, it entered into negotiations to disaggregate and transfer part of its spectrum in order to obtain funds to construct a system and operate on the retained spectrum. Westel states that these negotiations terminated, and that it is "in the process of effectuating alternative arrangements." In particular, Westel states that it has initiated discussions, through an affiliate, to order and install equipment.⁵ Based on the foregoing, Westel requests waiver of Section 24.203 and an extension until March 31, 2005 to meet the five-year construction requirement for WPOJ830.

Under Section 1.946 of the Commission's Rules, an applicant may request an extension of time to meet construction requirements. An extension may be granted where the failure to meet the deadline is due to circumstances beyond the control of the licensee. Section 1.946(e), however, specifically states that an extension request will not be granted due to delays caused by, *inter alia*, a failure to obtain financing or to order equipment in a timely manner, or because the licensee intends to assign or transfer the license.

¹ FCC File No. 0001791321, filed June 24, 2004 (Waiver Request).

² 47 C.F.R. § 24.203.

³ 47 C.F.R. § 1.946 (c).

⁴ Waiver Request Attachment.

⁵ *Id.*

Pursuant to Section 1.925 of the Commission's rules, a waiver request may be granted where it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

We have reviewed the record in this case and find that Westel has not provided an adequate basis for extending the five-year construction deadline, nor has Westel presented unique or unusual circumstances that would warrant a waiver of Section 24.203. Specifically, Westel's failed attempt to transfer a portion of the spectrum for license WPOJ830 in order to obtain financing does not warrant an extension. We find that the attempt to transfer a portion of the spectrum for the license, rather than timely construct a compliant system, was Westel's decision. Westel further indicates its managing principal had an unspecified temporary illness. We do not find that such illness mitigates the fact that Westel made a determination, as part of its business plan, to sell a portion of its spectrum to finance system construction. Accordingly, we find that Westel has not justified its request for an extension under rule section 1.946, and we do not find that the facts of this case are so unique or unusual that application of the construction rule would be inequitable, unduly burdensome or contrary to the public interest.

In view of the foregoing, Westel's request for an extension of time to meet the five-year construction requirement for license WPOJ830 and its request for waiver of Section 24.203 are hereby denied and, pursuant to Section 1.946(c) of the Commission's rules,⁶ the authorization for Station WPOJ830 terminated automatically on June 30, 2004.

Sincerely,

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁶ 47 C.F.R. § 1.946(c).